IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 6285 of 2005
Date of Decision: 8.9.2006

Surinder Kumar Sharma and another ...Petitioners

Versus

Jagdish Chand Verma ....Respondent

Coram: Hon'ble Mr. Justice Hemant Gupta.

Present: Shri Arun Palli, Advocate, for the petitioners.

Shri Arun Jain, Advocate, for the respondent.

JUDGMENT

The challenge in the present revision petition is to the order of ejectment passed by the authorities under the East Punjab Urban Rent Restriction Act, 1949 (for short `the Act'), whereby the petitioner has been ordered to be evicted on the ground that the demised premises bearing Property No. 3263 is required for bona-fide use and occupation of the respondent for his own use as an office of an Advocate.

The respondent herein sought ejectment of the petitioner from the property bearing No. 3263 on the ground that he has retired from the post of English Lecturer and he requires the demised premises for his personal necessity and bona-fide use to start his own business. It is the case of the petitioner-tenant herein that in fact, the petitioner is owner of three other properties bearing Nos. 4173, 4174 and 4293. The landlord in replication has taken up a stand that there was a family settlement in December, 1995 and in such family settlement property bearing Nos. 4173 and 4174 have fallen to the share of his brother Hardial Chand, whereas

property No. 4293 is said to be the residential house.

Both the Courts have returned concurrent findings of fact that there was a family settlement and in such family settlement property Nos. 4173 and 4174 have fallen to the share of Hardial Chand. Hardial Chand has been examined by the respondent as PW3, who deposed that there was a family settlement and property bearing Nos. 4173 and 4174 have fallen to his share in the family settlement. In respect of property No. 4293, it has been found that it is a residential property in respect of which the respondent has sought ejectment. On the basis of documents RW1/A to RW1/F, the respondent has sought ejectment vide Rent Petition No. 6 of 1998. Finding that the landlord-respondent has no other suitable premises for starting his business, the order ejectment was passed.

Learned counsel for the petitioner has vehemently argued that the plea of family settlement is only to overcome the documents, wherein the property is reflected as jointly owned by the parties. He has referred to an application made to the Municipal Committee on 11.7.1995 and sanctioning of the site plan on 10.11.1995. Said documents reflect the respondent and his brother as joint owners of the premises in dispute.

Learned counsel for the petitioner has also pointed out that in the house tax assessment register of a shop in dispute for the year 1997-98, Hardial Chand, is reflected as owner and that the plea of family settlement has been raised only to seek ejectment of the petitioner. Such family settlement is not shown to be reflected in any revenue record. In support of such argument, the learned counsel for the petitioner has placed reliance on **Vasudev Nath v. Jagdish Parshad Gupta and others 1993(1) PLR 23** and **Dr. Avtar Singh v. Ascharaj Lal 2002(3) Civil Court Cases 168**, to

contend that since the family settlement is fake, the petitioner cannot be ordered to be ejected. Therefore, the order of ejectment passed against the petitioner is not sustainable. It is also argued that the respondent has sought ejectment on the ground that he wants to start his business, whereas the order of ejectment has been passed on the ground that he has started practice as an Advocate, therefore, the same is required for his bona-fide use and occupation. It is, thus, argued that the order of eviction has been passed on the ground, which has not been pleaded by the respondent.

After hearing learned counsel for the parties at some length, I do not find any material illegality in the orders passed by the Courts below. Firstly the assertion of the petitioner in respect of property No. 4293 be examined. The respondent has sought ejectment of the tenant Pawan Kumar, while filing Rent Petition No. 9 of 1998 on the ground that the same is required for his residential purpose. From the documents Exhibit RW1/A to RW1/F, the Courts have passed an order of ejectment after returning a firm finding that it is a residential house.

In respect of property Nos. 4173 and 4174, it may be stated that though the same are jointly reflected to be owned by the respondent and his brother Hardial Chand, but Hardial Chand while appearing as a witness has deposed that there was a family settlement and shop Nos. 4173 and 4174 have fallen to his share. The petitioner, who has no title in the said shop has sought to dispute such family settlement only to allege that the alternative accommodation is available with the respondent. Once, it is stated by the brother of the respondent that such shops are in his possession as owner, I do not find any merit in the argument of the learned counsel for the petitioner that still it should be treated as a joint property. Even if, the

argument of the learned counsel is to be accepted, it will only mean that such property is jointly owned by the parties. An arrangement has been arrived at, whereby shop Nos. 4173 and 4174 are in possession of the brother of the respondent, therefore, I do not find any illegality in the findings recorded that the property No. 3263 is the only property in respect of which the respondent can seek ejectment of the tenant. In view of the above, I do not find any merit in the argument raised that the suitable alternative accommodation is available with the respondent.

The judgments referred to by the learned counsel for the petitioner are in the facts of their own case, where the family arrangements were not found to be genuine and hence not applicable to the facts of the present case. In the present case even as a co-owner, the respondent is entitled to seek ejectment when the other properties have been found to be in possession of the brother of the respondent.

The last argument raised by the learned counsel for the petitioner that the respondent has sought ejectment on the ground that he intends to start his business, whereas he has started his practice as an Advocate and, therefore, the ground of bona-fide personal requirement is not made out, is again without any merit. It is the case of the landlord that he requires the demised premises to start his own business at the time of retirement. He may not have envisaged that instead of starting his business, he may join the legal profession. Therefore, I do not find any contradictions in the pleadings raised and the requirement proved.

I do not find any patent illegality or irregularity in the findings recorded by the Courts below, which may require interference by this Court in exercise of its revisional jurisdiction.

Hence, the present revision petition is dismissed.

08-09-2006 (HEMANT GUPTA)
ds JUDGE